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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/086,627	05/29/1998	VERNON K. BOLAND	7675	8488

26890 7590 01/08/2002

JAMES M. STOVER
NCR CORPORATION
1700 SOUTH PATTERSON BLVD, WHQ4
DAYTON, OH 45479

EXAMINER

EDELMAN, BRADLEY E

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 01/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/086,627

Applicant(s)

BOLAND, VERNON K.

Examiner

Bradley Edelman

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 December 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

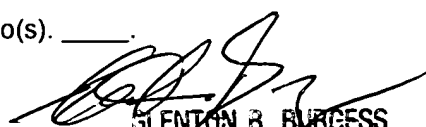
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


GLENON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

DETAILED ACTION

This action is in response to Applicant's request for reconsideration after final filed on December 27, 2001. Claims 1-16 are presented for further examination.

Response to Arguments

In response to Applicant's request for reconsideration filed on December 27, 2001, the following arguments are noted:

- a. The idea of allowing "the most important network distributed processes to be assured available resources" is not well known in the art.
- b. There is needed a suggestion or motivation that a single-computer-system resource-allocation scheme, such as the one taught by Culbert, is modifiable or adaptable to distributed network environments.
- c. It is impermissible to modify the Culbert system, i.e. to reallocate resources wholly irrespective of an amount of computer resources necessary for low-priority processes to run on the computer network, in a manner that runs counter to the requirements of the Culbert system itself.

In considering (a), Applicant contends that the idea of allowing "the most important network distributed processes to be assured available resources" is not well known in the art. Examiner respectfully disagrees. Applicant further requested that the Examiner provide a reference to show that such a motivation is well known in the art. It is not necessary to supply a separate reference because the Culbert reference itself

includes the function of supplying required resource utilization parameters necessary for tasks to function properly (col. 7, lines 49-51), and degrading the system as much as possible *while still providing the needed resources* (col. 9, lines 52-54), and also discusses prioritized tasks wherein certain tasks are given priority over others in utilizing resources (col. 9, lines 24-32). These features clearly suggest the desirability of assuring that the most important processes in computer system are allocated with sufficient resources to function properly.

In considering (b), Applicant contends that there is needed a suggestion or motivation that a single-computer-system resource-allocation scheme, such as the one taught by Culbert, is modifiable or adaptable to distributed network environments. Examiner respectfully disagrees. In response to this argument, note that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Here, one of the key features of Applicant's invention is a guaranteed minimum resource allocation for particular processes on a network. The idea of guaranteed minimum resource allocation for particular processes is clearly well known, as evidenced by the above described Culbert reference (Applicant has stated in the response after-final that the system taught by Culbert "guarantee[s] minimum resource

allocation for processes . . .” [see page 6 of Applicant’s response after final, and Culbert, col. 9, lines 47-54]). Thus, regardless of the system in which it is used, *the idea and feature of including a guaranteed minimum resource allocation to processes in a computer system* is well known. It thus would have been obvious to include such a feature in any resource allocation system, such as a resource allocation system for distributed processes across a computer network, because the guarantee inherently provides the most important processes with available resources.

In considering (c), Applicant contends that it is impermissible to modify the Culbert system, i.e. to reallocate resources wholly irrespective of an amount of computer resources necessary for low-priority processes to run on the computer network, in a manner that runs counter to the requirements of the Culbert system itself. Examiner respectfully disagrees. Primarily, the Culbert system can be modified in any way that might be desirable to a designer of the system. Culbert has opted to allow low-priority processes to always maintain some amount of allocated resources for proper performance. However, Culbert could have just as easily designed the system to allow lower priority processes to be completely overridden by higher priority processes. For instance, the priority of the low-priority tasks could have been set to zero, or the minimum resources necessary could have been set to zero. Either way, the choice to completely override low-priority processes instead of protecting some minimum resource allocation for these low-priority tasks is not an inventive step, but is simply a choice of design regarding a desired level of resource allocation. Therefore, it would be

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permissible, and even desirable, to reallocate resources in the Culbert system wholly irrespective of an amount of computer resources necessary for low-priority processes to run, if the only important processes for which a designer desires to allocate resources are high-priority processes.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is (703) 306-3041. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:00 PM.

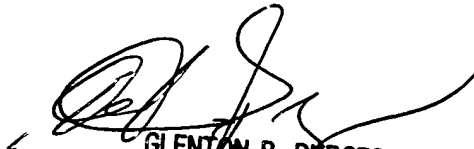
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (703) 305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

For all After Final papers: (703) 746-7238.

For all other correspondences: (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3900.

BE
December 31, 2001


GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100